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CHAPTER 22

TOBACCO

ARTICLE I – SALE AT RETAIL

DIVISION I - GENERAL PROVISIONS

22-1-1 **DEFINITIONS.** For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them:

(A) **TOBACCO PRODUCTS** means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

(B) **ELECTRONIC CIGARETTE PRODUCT** is a product designed or intended for use with an electronic cigarette, such as atomizers, cartomizers, batteries, bottles, or vaporizing liquid (e-juice).

(C) **ELECTRONIC CIGARETTE** is a device which stimulates tobacco or other smoking. It uses a heating device or other mechanism that vaporizes a liquid solution. An “electronic cigarette” includes devices known as personal vaporizer or electronic nicotine delivery system. “Electronic cigarette” does not include drugs, devices or combination products authorized for sale by the U.S. Food and Drug Administration as a tobacco cessation product, or as a tobacco dependence product, or for other medical purposes.

(D) **ALTERNATIVE NICOTINE PRODUCT** is a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. This does not include drugs, devices or combination products authorized for sale by the U.S. Food and Drug Administration as a tobacco cessation product, or as a tobacco dependence product, or for other medical purposes.

(E) **VENDING MACHINE** means any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products.

22-1-2 **LICENSE REQUIRED FOR RETAIL SALE.** Within the corporate limits of the Village, it shall be unlawful to engage in the sale at retail of tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products in any form or in any number without having first obtained a license therefor. Sales by vending machines are regulated by Division II of this Article.

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22-1-3 **APPLICATION FOR LICENSE.** Application for the license required by Section 22-1-2 shall be made in writing to Village Clerk on forms provided by the Clerk and no such license shall be issued to any individual who is not a person of good character or to any corporation that is not represented in the Village by a person of good character.

22-1-4 **LICENSE FEE.** The annual fee for the license required by Section 22-1-2 shall be that fee established by motion adopted from time to time by the Village Board of the Village.

22-1-5 **SANITATION.** Premises and buildings used for the sale tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products shall be kept in clean and sanitary condition.

22-1-6 **SALE TO PERSONS UNDER 21.**

(A) It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or exchange any tobacco products, electronic cigarettes, electronic cigarette products, alternative nicotine products and/or all types of pipes, cigarette papers, and any other materials used for smoking including, but not limited to, all types of smoking paraphernalia, to any person under the age of twenty-one (21) years.

(B) Signs informing the public of the age restrictions provided for herein shall be posted by every licensee at or near every display of tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products and on or upon every vending machine that offers tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products for sale. Each such sign shall be plainly visible and shall state:

**“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER
TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW.”**

The above text of such signs shall be in white letters on a red background, said letters to be at least three eighths of one inch (3/8”) in height. Such signs may contain additional verbiage regarding the penalty for violation.

22-1-7 **MINIMUM AGE TO SELL TOBACCO PRODUCTS, ELECTRONIC CIGARETTES, ELECTRONIC CIGARETTE PRODUCTS, AND/OR ALTERNATIVE NICOTINE PRODUCTS.** It shall be unlawful for any licensee or any officer, associate, member, representative, agent or employee of such licensee, to engage, employ or permit any person under sixteen (16) years of age to sell tobacco products upon or in any premises licensed pursuant to this Article. This section does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner.

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22-1-8 **POSSESSION BY MINORS PROHIBITED.** It shall be unlawful for any person under the age of twenty-one (21) years to possess any tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products; provided that the possession by a person under the age of twenty-one (21) years under the direct supervision of the parent or guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.

22-1-9 **PROXIMITY TO CERTAIN INSTITUTIONS.** It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products, electronic cigarettes, electronic cigarette products, or alternative nicotine products within one hundred (100) feet of any school, child care facility or other building used for education or recreational programs for persons under the age of twenty-one (21) years.

22-1-10 **CERTAIN FREE DISTRIBUTIONS PROHIBITED.** It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting or advertising tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products, or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, to distribute, give away or deliver tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products free of charge to any person on any right-of-way, park, playground or other property owned by the Village, any school district, or any park district.

DIVISION II – CIGARETTE VENDING MACHINES

22-1-11 **LICENSE REQUIRED.** Within the corporate limits of the Village, it shall be unlawful to engage in the sale at retail of cigarettes from any vending machine without having first obtained a license for each such machine.

22-1-12 **APPLICATION; APPLICANTS.** Application for the license required by Section 22-1-11 shall be made in writing to the Village Clerk on forms provided by the Clerk and no such license shall be issued to any individual who is not a person of good character or to any corporation that is not represented in the Village by a person of good character.

22-1-13 **LICENSE FEE.** The annual fee for the license required by Section 22-1-11 shall be that fee established by motion adopted from time to time by the Village Board of the Village.

22-1-14 **LOCKING DEVICE.**

(A) It shall be unlawful for any licensee to sell or offer for sale, give away, deliver or keep with the intention of selling, giving away or delivering tobacco products, electronic

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cigarettes, electronic cigarette products, and/or alternative nicotine products by use of a vending machine, unless such vending machine is equipped with a manual, electric or electronic locking device controlled by the licensee so as to prevent its operation by persons under the age of twenty-one (21) years.

(B) Any premises or portion thereof where access by persons under the age of twenty-one (21) years is prohibited by law, or premises where the public is generally not permitted and where vending machines are strictly for the use of employees of a business located at such premises, shall be exempt from the requirements of paragraph (A) of this Section.

22-1-15 **INSPECTIONS; OUT-OF-ORDER NOTICES.** The Police Chief of the Village shall make or cause to be made such inspections as often as necessary to ascertain that licensed vending machines are not out of order; and

(A) When any vending machine is found to be out of order, the owner or operator in charge of the machine shall be notified; and

(B) The owner or person in charge of such machine shall cause a written notice that the machine is out of order to be posted on the machine and remain so posted until the machine has been repaired.

DIVISION III – PENALTY

22-1-16 **RESPONSIBILITY FOR AGENTS AND EMPLOYEES.** Every act or omission of whatsoever nature, constituting a violation of any of the provisions of this Article by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.

22-1-17 **SUSPENSION AND REVOCATION OF LICENSE; FINES, COSTS.**

(A) The Village President shall be charged with the administration of this Article. The Village President may suspend or revoke any license issued under the provisions of this Article, in the event he determines that the licensee has violated any of the provisions of this Article. In lieu of suspension or revocation of a license, the Village President may instead levy a fine on the licensee. The fine imposed shall not exceed Five Hundred Dollars (\$500.00) for each violation. Each day on which a violation continues shall constitute a separate violation.

(B) However, no such license shall be suspended or revoked and no licensee shall be fined except after a public hearing by the Village President with a seven (7) day written notice to the licensee affording the licensee an opportunity to appear and defend against the charges contained in such notice. The seven (7) day notice provisions shall begin the day following delivery by certified mail or by personal service.

(C) As a result of such hearing, in the event the Village President determines that

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the license of a licensee should be revoked or suspended or that the licensee should be fined, within seven (7) days after such hearing the Village President shall make such determination and state the reasons therefor in a written order and give notice of the entry of the order by delivering a copy thereof to the licensee within seven (7) days of entering said order.

(D) Any licensee determined by the Village President to have violated any of the provisions of this Article shall reimburse the Village the costs determined by the Village President to have been incurred by the Village by reason of such violation, including but not limited to the costs of the hearing which include the court reporter's fees, the costs of transcripts or records, attorneys' fees, the cost of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the Village.

(E) The licensee shall pay the amount of any such fines as well as the amount of said reimbursement costs to the Village within thirty (30) days or notice of the costs by the Village President. It shall be unlawful to fail to pay said fine and/or costs within thirty (30) days of notice.

22-1-18 USE OF PREMISES AFTER REVOCATION. When any license issued pursuant to this Article shall have been revoked for any cause, no license shall be granted to said licensee for the conduct of the business of selling tobacco products, electronic cigarettes, electronic cigarette products, and/or alternative nicotine products upon or in the premises described in such revoked license for the period of six (6) months immediately following such order of revocation.

22-1-19 PENALTY. Except as otherwise provided in this Article, any person, firm or corporation found by a court of competent jurisdiction to have violated any regulation set forth in this Article shall be fined in the amount of not less than Fifty Dollars (\$50.00) nor more than Seven Hundred Fifty Dollars (\$750.00). Each day that a violation is found to have existed shall be deemed as a separate violation.

Tobacco License Application

Village of Germantown

306 Prairie St., PO Box 310 Germantown, IL 62245
Phone (618)523-4243 Fax (618)523-4273

Vendor Name (Doing Business As)

Owner/Corporation Name

Phone

Mailing/Billing Address

City

State

Zip Code

- 1) The license fee to sell tobacco products with in the Village of Germantown shall be \$10 annually.
- 2) Said license shall be posted in a conspicuous place in the premises.
- 3) The selling of tobacco products to persons under eighteen years of age is prohibited by law and will result in the loss of license.
- 4) It shall be unlawful for any person to sell, offer for sale, or give away tobacco products within 100 feet of any school, child care facility or other building used for education or recreational programs for persons under the age of eighteen years.
- 5) Signs informing the public of age restrictions (under the age of 18 years) shall be posted by every licensee at or near every display of tobacco produts. Each sign shall state: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW".

I certify that I intend to sell tobacco products in compliance with all applicable Village ordinances.

Over the Counter ☐

Vending Machines ☐

I am the owner Agent of Owner other

Signature of Applicant _____ Date _____

Printed Name of Applicant _____

For office use only

Date Paid

Amount Paid

License Number

Comments

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ARTICLE II – SMOKE FREE PUBLIC PLACES**DIVISION I - GENERAL PROVISIONS**

22-2-1 **DEFINITIONS.** For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them:

“Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10% of its gross revenue from the sale of food consumed on the premises. “Bar” includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.

“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits or a person who volunteers his or her services for a non-profit entity.

“Employer” means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons.

“Enclosed area” means all space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.

“Enclosed or partially enclosed sports arena” means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational, or other events.

“Gaming equipment or supplies” means gaming equipment/supplies as defined in the Illinois Gaming Board Rules of the Illinois Administrative Code.

“Gaming facility” means an establishment utilized primarily for the purposes of gaming and where gaming equipment or supplies are operated for the purposes of accruing business revenue.

“Healthcare facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or

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psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. "Healthcare facility" includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

"Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to entrances and exits to places of employment, including a minimum distance, as set forth in Section 2 of this Division, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment", nor are enclosed laboratories, not open to the public, in an accredited university or government facility where the activity of smoking is exclusively conducted for the purpose of medical or scientific health-related research.

"Private club" means a not-for-profit association that (1) has been in active and continuous existence for at least 3 years prior to the effective date of this Article, whether incorporated or not, (2) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, (3) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and (4) only sells alcoholic beverages incidental to its operation. For purposes of this definition, "private club" means an organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501.

"Private residence" means the part of a structure used as a dwelling, including, without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin, or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home, or assisted living facility shall not be considered a private residence.

"Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Illinois, or any other public entity and regardless

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of whether a fee is charged for admission, including a minimum distance, as set forth in Section 2 of this Division, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A “public place” does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. A “public place” includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government owned vehicles and facilities, including buildings and vehicles owned, leased, or operated by the State or State subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, and no less than 75% of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences.

“Restaurant” means (i) an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and (ii) a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. “Restaurant” includes a bar area within the restaurant.

“Retail tobacco store” means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. “Retail tobacco store” includes an enclosed workplace that manufactures, imports, or distributes tobacco or tobacco products, when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of that tobacco or tobacco product, tobacco is heated, burned, or smoked, or a lighted tobacco product is tested, provided that the involved business entity: (1) maintains a specially designated area or areas within the workplace for the purpose of the heating, burning, smoking, or lighting activities, and does not create a facility that permits smoking throughout; (2) satisfies the 80% requirement related to gross sales; and (3) delivers tobacco products to consumers, retail establishments, or other wholesale establishments as part of its business. “Retail tobacco store” does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

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"Smoke" or "smoking" means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment. "Smoke" or "smoking" does not include smoking that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

22-2-2 SMOKING IN PUBLIC PLACES, PLACES OF EMPLOYMENT, AND GOVERNMENTAL VEHICLES PROHIBITED. No person shall smoke in a public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment. No person may smoke in any vehicle owned, leased, or operated by the State or a political subdivision of the State. An owner shall reasonably assure that smoking is prohibited in indoor public places and workplaces unless specifically exempted by Section 5 of this Division.

22-2-3 POSTING OF SIGNS; REMOVAL OF ASHTRAYS.

(a) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in each public place and place of employment where smoking is prohibited by this Article by the owner, operator, manager, or other person in control of that place.

(b) Each public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

22-2-4 DESIGNATION OF OTHER NON-SMOKING AREAS.

Notwithstanding any other provision of this Article, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, including outdoor areas, as an area where smoking is also prohibited provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in subsections (a) and (b) of Section 3 of this Division.

22-2-5 EXEMPTIONS. Notwithstanding any other provision of this Article,

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smoking is allowed in the following areas:

(a) Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public.

(b) Retail tobacco stores as defined in Section 1 of this Division in operation prior to the effective date of this Article. The retail tobacco store shall annually file with the Village Clerk by January 31st an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after the effective date of this amendatory Act may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited.

(c) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

(d) Enclosed laboratories that are excluded from the definition of "place of employment" in Section 1 of this Division.

(e) Common smoking rooms in long-term care facilities operated under the authority of the Illinois Department of Veterans' Affairs or licensed under the Nursing Home Care Act that are accessible only to residents who are smokers and have requested in writing to have access to the common smoking room where smoking is permitted and the smoke shall not infiltrate other areas of the long-term care facility.

22-2-6 ENFORCEMENT; COMPLAINTS. The Police Department shall enforce the provisions of this Article through the issuance of citations and may assess fines pursuant to Section 7 hereof.

22-2-7 VIOLATION.

(a) A person, corporation, partnership, association or other entity

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who violates Section 2 of this Division shall be fined pursuant to this Article. Each day that a violation occurs is a separate violation.

(b) A person who smokes in an area where smoking is prohibited under Section 2 of this Division shall be fined in the amount of \$100 for a first offense and \$250 for each subsequent offense. A person who owns, operates, or otherwise controls a public place or place of employment that violates Section 2 of this Division shall be fined (i) \$250 for the first violation, (ii) \$500 for the second violation within one year after the first violation, and (iii) \$750.00 for each additional violation within one year after the first violation.

22-2-8 **INJUNCTIONS.** In addition to any other sanction or remedy, the Village may institute, in a circuit court, an action to enjoin violations of this Article.

22-2-9 **DISCRIMINATION PROHIBITED.** No individual may be discriminated against in any manner because of the exercise of any rights afforded by this Article.

22-2-10 **ENTRANCES, EXITS, WINDOWS, AND VENTILATION INTAKES.** Smoking is prohibited within a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited under this Article so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means.